

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
COLUMBIA DIVISION

## ORDER

The Magistrate Judge has entered a Report and Recommendation (“R & R”) (Docket No. 62) in which he recommends that Defendants’ Motion to Dismiss (Docket No. 44) for insufficient service of process under Fed. R. Civ. P. 12(b)(5) be denied. In doing so, the Magistrate Judge notes that Plaintiff, who is proceeding *in forma pauperis*, met his burden of identifying the Defendants to be served, at which point responsibility for service rested with the United States Marshal pursuant to 28 U.S.C. § 1915(d), and it would be inappropriate to dismiss the case since Plaintiff was not responsible for effecting service. However, to remedy the lack of service, the Magistrate Judge also recommends that Defendants be given twenty days to file a notice of waiver of the defense of insufficient service of process, or to otherwise advise the Court on where and when they can be served. Defendants have filed a response to the R & R in which they “specifically waive service of process in this cause of action pursuant to the Report and Recommendation.” (Docket No. 65).

Accordingly, the R & R (Docket No. 62) is hereby ACCEPTED AND APPROVED, and Defendants' Motion to Dismiss (Docket No. 44) is hereby DENIED.

It is SO ORDERED.

Kevin H. Sharp  
KEVIN H. SHARP  
UNITED STATES DISTRICT JUDGE